

**United States District Court**  
**Southern District of Florida**  
**FT. LAUDERDALE DIVISION**

UNITED STATES OF AMERICA

FILED BY *[Signature]* D.C.  
**AUG 28 2002**  
CLARENCE MADDOX  
CLERK U.S. DIST. CT.  
S.D. OF FLA. FT. LAUD.

**THIRD AMENDED**  
**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

v.

Case Number: 00-6328-CR-FERGUSON

**SMLX TECHNOLOGIES, INC.**

Counsel For Defendant: John Mariani, Esq.,  
Counsel For The United States: Robert Nicholson, Esq.,  
Court Reporter:

The defendant pleaded guilty to Count ONE (1) of the Information.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

<b>TITLE/SECTION NUMBER</b>	<b>NATURE OF OFFENSE</b>	<b>DATE OFFENSE CONCLUDED</b>	<b>COUNT</b>
21 U.S.C. § 331 (a)	Introduction and Delivery for introduction into interstate commerce of adulterated and misbranded medical devices.	01/12/1998	1
21 U.S.C. §333 (a)(2)			

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

**IT IS FURTHER ORDERED** that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Defendant's Soc. Sec. No. N/A  
Defendant's Date of Birth: N/A  
Deft's U.S. Marshal No.: N/A

Date of Imposition of Sentence:  
April 30, 2001

Defendant's Mailing Address:  
855 South Federal Highway  
Boca Raton, FL

Defendant's Residence Address:  
855 South Federal Highway  
Boca Raton, FL

*[Signature]*  
WILKIE D. FERGUSON, JR.  
United States District Judge  
28/8/2002

August 28, 2002

*[Signature]*  
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## PROBATION

The defendant is hereby sentenced to probation for a term of **Five (5) Years.**

- While on probation, the defendant shall not commit another federal, state, or local crime.
- The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

- The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter.
- **The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.**
- If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.
- The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).
- **The defendant shall also comply with the additional conditions on the attached page.**

## STANDARD CONDITIONS OF SUPERVISION

- The defendant shall not leave the judicial district without the permission of the court or probation officer;
- The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
- The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- The defendant shall support his or her dependents and meet other family responsibilities;
- The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- The defendant shall notify the probation officer **at least ten (10) days prior** to any change in residence or employment;
- The defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- The defendant shall notify the probation officer within **seventy-two (72) hours** of being arrested or questioned by a law enforcement officer;
- The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

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### **SPECIAL CONDITIONS OF SUPERVISION**

The defendant shall also comply with the following additional condition(s) of probation:

- (A) The defendant shall not apply for, solicit, or incur, any further debt, included but not limited to, loans, lines of credit, or credit card charges, either as a principal or cosigner, as an individual or through any corporate entity, without first obtaining permission from the U.S. Probation Officer.
- (B) The defendant shall provide complete access to financial information, including disclosure of all business balance sheets, statement of operations and cash flow statements, to the U.S. Probation Officer.

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## CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in the Schedule of Payments.

<u>Total Assessment</u>	<u>Total Fine</u>	<u>Total Restitution</u>
<b>\$400.00</b>	<b>\$150,000.00</b>	<b>\$197,500.00</b>

The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid in full prior to the United States receiving payment.

<u>Name of Payee</u>	<u>Total Amount of Loss</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order or Percentage of Payment</u>
Jorge Chavez	\$	\$64,018.00	
**Joseph Sarduy	\$	\$ 2,827.33	
**Dante Rubio	\$	\$2,827.33	
**Abbey Fiallo	\$	\$2,827.33	
SDK Pharmaceuticals Inc.	\$	\$35,000	
Timothy Martsching	\$	\$72,500	
Salterven International S.A.	\$	\$17,500	

\*\* Formerly GEMCO

\*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

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## SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A. Lump sum payment of \$ due immediately.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

**The assessment/fine/restitution is payable to the U.S. COURTS and is to be addressed to:**

**U.S. CLERK'S OFFICE  
ATTN: FINANCIAL SECTION  
301 N. MIAMI AVENUE, ROOM 150  
MIAMI, FLORIDA 33128**

**The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.**

### **Joint and Several Liability for Restitution**

- (1) Henry Bernard Schur  
00-6329-CR-FERGUSON  
Joint and Several Amount: \$197,500.00
- (2) Nicholas Levandoski  
00-6329-CR-FERGUSON  
Joint and Several Amount: \$197,500.00

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest (7) penalties, and (8) costs, including cost of prosecution and court costs.

### **ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES**

- The Defendant is to submit \$20,000 at the time of the Sentencing, followed by two additional payments at a rate of \$20,000 per month during the succeeding two months. The defendant shall thereafter make monthly payments of \$10,000 until the fine and restitution are paid in full. The monthly payments shall be due on the last business day of each month following the imposition of sentence. The defendant agrees to use its best efforts to satisfy the monthly payments. If financial circumstances do not permit timely payments, the defendant shall notify the United States Probation Office in advance of the due date of any monthly payment which will not be made in full. Such notice shall include a current financial statement of the company, and sworn statement of the Chief Financial Officer or the President, setting forth the reasons the full payment cannot be made.
- The Probation Officer may on the basis of the corporation's financial status, and with Court approval, adjust the schedule of payments to reduce or accelerate payments of the restitution and fines.

- The total amount of restitution ordered to victim Jorge Chavez is to be reduced in an amount equal to that submitted by the defendant to Jorge Chavez and/or C&O Trading in Broward County Circuit Court Arbitration Proceeding Case Number 00-5835, subject to verification of payments by the United States Probation Office.